IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1149 of 2003
in
SPECIAL CIVIL APPLICATIONNo 6886 of 1998
with
CIVIL APPLICATION NO. 2815 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE R.S.GARG
and
HON'BLE MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : YES

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT ELECTRICITY BOARD

Versus

BALVANTSINH S RAHEVAR

Appearance:
1. LETTERS PATENT APPEAL No. 1149 of 2003
MR MD PANDYA for Appellant No.
MR TR MISHRA for Respondents

CORAM : HON'BLE MR.JUSTICE R.S.GARG
and
HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 21/04/2005

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE R.S.GARG)

Present is an appeal under Clause 15 of the Latent Patent by Gujarat State Electricity Board being

aggrieved by the order dated 12.9.2002 passed in Special Civil Application No. 6886 of 1992 whereby the learned Single Judge allowed the writ application filed by as many as 23 writ petitioners and directed that the original petitioners who were working as Civil Mistries be given the pay scale as was given to one R.J.Shah and others in Reference (IT) Nos.71/89, 72/89, 69/89 and 55/89.

It is not in dispute before us that each of the respondent - original petitioners Nos.1 to 10 of the List marked as Annexure.A to the writ application are working in the Transmission Division at Navsari, petitioners Nos.11 to 14 are working in Thermal Power Station, Sikka and rest of the petitioners are working in the Transmission Circle at Jambuva, District Baroda. It is the case of the petitioners that petitioners Nos.1 to 9 are shown to be permanent while the others are shown to have entered in the service only, but against their names, the date of their becoming permanent has not been mentioned. According to the petitioners, they joined the services in the pay scale of Rs.290-733 which was revised to Rs.980-2280. According to them, the petitioners were making repeated representations for grant of pay scale of Rs.1180-3050, but no action had been taken by the Gujarat Electricity Board. They submit that as many as four employees through Akhil Gujarat Vidhyut Kamdar Sangh raised an industrial dispute which was registered as Reference I.T.Nos. 71/89, 72/89, 69/89 and 55/89. The Industrial Tribunal passed an award on 19.8.1994 directing to grant pre-revised pay scale of Rs.340-982. A copy of the said award has been annexed with the writ application at Annexure.B. It is also the submission of the petitioners that in the year 1985, the respondent Board took a decision to implement the award accordingly granting pay scale of Rs.1180-3050 to the said Civil Mistries. Thereafter the office order dated 27.6.1995 was issued fixing the pay in the scale of Rs.1180-3050. According to the petitioners, as they were entitled to pay scale of Rs.1180-3050 and a competent Tribunal had made an award in favour of some of the employees, they through their recognised Union, namely, Akhil Gujarat Vidhyut Kamdar Sangh, made certain representations to remove the disparity in the matter of grant of pay scales to the employees belonging to same categories but nothing fruitful could be done in the matter.

The petitioners submit that the petitioners even in their individual capacity made representations to the Department for grant of the pay scale, but the representations fell on the deaf year of the Department.

Constrained by the circumstances, a notice was served on the Electricity Board on 11.6.1997, but the same remained unreplied. According to the petitioners, as Civil Mistries are entitled to pay scale of Rs.340-942 and revised pay scale of Rs.1180-3050 and as there is an award of the competent Tribunal in favour of some of the employees who are similarly situated and as the said award has been in force and implemented in case of those employees, the petitioners who are similarly situated, are also entitled to the said benefits. The petitioners, therefore, prayed that the petitioners be placed in the pay scale of Rs.340-942 and revised pay scale of Rs.1180-3050 with retrospective effect i.e. from the date of their appointment, interest at the rate of 24% on the arrears be paid to them and any other relief which the Court deems fit be also granted.

The respondents in their reply raised number of pleadings submitting inter alia that the cadres of Civil Mistries and Civil Supervisors (Sub-Overseer) are different. Revised pay scale of Civil Mistries is Rs.980-25-1080-2280 while the pay scale of the Civil Supervisor (Sub-Overseer) is Rs.1180-40-3050. According to them, the qualification to occupy the post of Civil Mistries is upto SSC and the incumbent should know taking of measurement of construction work and he should have adequate knowledge of concrete and mortar portions (should have ITI certificate in relevant Civil trade), while the qualification for Civil Supervisor (Sub-Overseer) is that the incumbent must possess certificate Course in Civil Engineering/Overseer Course/Diploma holders preferred. For Civil Mistry, the experience is of five years of Civil Construction Supervision, while the experience for Civil Supervisor is three years for Certificate holder.

According to the Electricity Board, Civil Mistry and Civil Supervisor are totally different cadres, their qualifications are different, the required qualifications are different and their status in the Establishment are also different. According to them, the pay scale available to a Civil Supervisor cannot be awarded to a Civil Mistry because if the said pay scale is awarded in favour of or granted to the Civil Mistry, then it would virtually abolish one of the cadres and the Civil Mistry would be put at par with the Civil Supervisor. It is also submitted that the nature of the duties and work assigned to Civil Mistry and Civil Supervisor are different. The Supervisor requires to supervise the work while the Mistries take work in their hands. It was also submitted that though some of the Civil Mistries

approached the Industrial Tribunal and the award made in their favour was implemented, but that award was on the facts of those cases and in the special circumstances. According to them, the award made in favour of some would not be res-judicata against the appellants when question of others comes. They also submitted that after earlier award was implemented, it was realised that similar demands from several Civil Mistries were being raised which persuaded the Board to make investigations into the issue as to how the Civil Mistry was getting pay scale of Rs.1180-3050 when the pay scale for the said post was Rs.980-2200. According to them, it was realised that Civil Mistry Mr.S.H.Doshi was Diploma holder in Civil Engineering and had joined as Work Charge Civil Mistry in the pay scale of Rs.1180-3050. They submitted that the proposal was made to grant him the pay scale of Rs.980-2200, but treating his case to be special, he was made Supernumerary Civil Mistry in the pay scale of Rs.1180-3050 and, immediately thereafter, a notice was issued to show cause for revising the scale.

The Board also submitted that the matter was such which required an investigation into the facts and the High Court, under the circumstances, could not enter into a fact finding inquiry nor could award any benefit to the petitioners before it. They submitted that the earlier award made in favour of some only would not be binding between the parties to the present lis and in any case each individual has to raise his personal grievance. It was submitted that if an award made in favour of some of the employees is sought to be applied to all others through this Court then any award against the interest of some employees should be applied to all and if not, the award made in favour of few would be binding between the parties to the said lis because the said was an order in-personum.

It was submitted that the petitioners were not entitled to any relief.

The learned Single Judge, after hearing the parties, observed that the contention of the Electricity Board that the Civil Mistries-Ukai fall into two categories is a new contention being raised for the first time, this contention was not raised before the Industrial Tribunal in the earlier Reference in which the award was made, secondly, if the contention is allowed to be raised, it would necessitate a deeper inquiry on various questions of fact which cannot be entertained in a petition under Article 226 of the Constitution of India, thirdly, even if the Civil Mistries-Ukai possibly

be divided into two categories, it would not make any difference in law or the principle because the Civil Mistries are Civil Mistries. The learned Single Judge observed that if Civil Mistries employed at a particular place were getting benefit of a better pay scale, then the petitioners before this Court could not be discriminated and were also entitled to the same benefits flowing in favour of those who had the award in their favour. The learned Single Judge accordingly directed that the Civil Mistries/petitioners before the Court would be entitled to the pay scale as was being paid to the Civil Mistries-Ukai with effect from the date on which each of the petitioner was regularly appointed or confirmed as Civil Mistries.

Being aggrieved by the said judgment of the learned Single Judge, the Gujarat Electricity Board is before this Court. Mr.Pandya, learned Counsel for the appellant submitted that if the cadres of Civil Mistries and Civil Supervisors are different, their pay scales are different, their qualifications, duties and work etc. are different, then the pay scale of one cannot be granted to another. He also submits that the award made in favour of some of the Mistries would be binding between the parties to the said lis and would not bind any person, who is not a party to the said lis. The submission in fact is that even if the award made in favour of the four persons has been implemented, then too the Board is entitled to raise the plea that the Civil Mistries being a class different and the class in difference is to be treated differently from the class of the Civil Supervisors. His further submission is that the award made in favour of those employees if is to be accepted to be final for all the time to come and binding between all the employees on one side and the Board on the other, then it may lead to a chaos because in case of an award in favour of the Board may operate against those who were never heard. It is further submitted that the learned Single Judge was absolutely unjustified in observing that the plea/explanation in relation to the Civil Mistries-Ukai was being raised for the first time. His submission is that in the present writ application, at the first available opportunity the plea was raised. His further submission is that if the question of facts and disputes relating to facts were being raised by the respondent, the Court should have stayed the action instead of rejecting the plea raised by the present appellant who were the respondent before the learned Single Judge. He also submitted that the plea that the Civil Mistries were appointed under different circumstances, was a valid plea and the same could not be

rejected just for the sake rejection. It was also submitted that the plea of res-judicata or estoppel would not be available to the present petitioners against the Board because the parties are not claiming under the same title nor the parties to the present writ application were parties to the earlier list.

During pendency of this Letters Patent Appeal, an affidavit was filed for and on behalf of the Electricity Board saying that a notice to show cause was issued and the pay scale earlier awarded in favour of one of the Mistries was recalled. To counter-blast the said fact, the petitioners have filed an affidavit submitting inter alia that there had been a sinister compromise between the Board and the said employee, on one side the benefits of the higher grade were being withdrawn and at the same time, he was assured of promotion and in fact was promoted. According to the respondents, the Electricity Board was trying to play the game of hide and seek.

Mr.Mishra, learned Counsel for the respondents, on the merits, submitted that the award made in favour of those four persons, if was accepted by the Board, then the Board cannot be allowed to raise a plea that the said award would not govern the service conditions of all other similarly situated persons. He also submitted that the Electricity Board was extending step-motherly treatment and was trying to discriminate amongst those similarly situated. His submission is that if under the award some or even if a few have been given the benefit of the higher pay scale, then the said benefit should be extended in favour of all. Placing reliance on certain High Court and Supreme Court judgments, he submitted that similars are to be treated similarly and the Board being a statutory Corporation, cannot be allowed to play tricks with its employees.

We have heard learned Counsel for the parties and have also perused the records.

It is not in dispute before us that the Civil Mistries and Civil Supervisors belong to different cadres. It is also not in dispute before us that the pay scales of Civil Mistries and Civil Supervisors are different. It is also not in dispute before us that the qualifications to hold the post are distinct and separate and the qualifications for Civil Supervisors are higher in comparison to the qualifications provided for the post of Civil Mistries. It was also admitted before us that the duties and the work assigned to Civil Mistries and Civil Supervisors are different. From these facts, it

would clearly appear that there are two distinct and separate cadres, one of Civil Mistries while the other is of Civil Supervisors. It is also to be seen that revised pay scale of the Civil Mistry is Rs.980-2280 while the revised pay scale of Civil Supervisors is Rs.1180-3050. It is trite law that the pay scale of one cadre cannot be extended in favour of another cadre especially when the cadres are different and the work and duties of such incumbents of different cadre are different.

The petitioners have come with the case that they had been appointed as Civil Mistries and were given the pay scale of Rs.980-2280. It is not the case of the petitioners that they were appointed in a lower pay scale while in fact they were entitled to higher pay scale. Their case is that one Civil Mistry at Ukai has been admitted to the pay scale of Rs.1180/3050 and there are awards in favour of four persons giving them the pay scale of Rs.1180-3050, the petitioners who are originally appointed as Civil Mistries and continued to hold the same post are also entitled to pay scale of Rs.1180-3050. In our considered opinion when a person is appointed as Civil Mistry, he would be entitled to the pay scale attached to the post to which he is being appointed.

The sheet anchor of the petitioners' argument is the discrimination extended against the petitioners while favoritism is shown in favour of Civil Mistry at Ukai and those four persons.

We have repeatedly asked Mr.Mishra, learned Counsel that in a reverse situation if the case of few are rejected by the Industrial Tribunal, then would that judgment be res-judicata between the other employees and the Board, to which Mr.Mishra submitted that that would be a different situation.

In case of res-judicata, the principles underlying Section 11 of the Code of Civil Procedure would apply. The principles broadly are that the parties are the same, the issues were identical and the issues were finally decided or the parties litigating in present are claiming from those who had earlier litigated and in such circumstances, they are stepping in the shoes of their predecessors or in a matter of interpretation of a particular thing wherein there is lis for and on behalf of the general public with the permission of the Court under Section 91 of the Code. The principles of res-judicata cannot be applied to a matter where the parties are different, they are claiming under different title and in their personal capacity. If the

petitioners' submission are accepted, it in fact would lead to an anomalous situation because some person may obtain a small relief and at a given point of time suferer or the judgment debtor may not challenge the same but if that order, award or the decree is allowed to be applied as matter of res-judicata, then it would adversely affect the interest and right of the suferer. The suferer in any case would be entitled to oppose and contest the grounds raised by the others. In a given case, an award or judgment may be relevant or may have persuasive value, but in other cases the same judgment, decree, award or order may not have any persuasive value. In the present case, it is to be seen that some award in favour of four persons was made on particular facts.

The Supreme Court in the matter of Pondicherry Khadi & Village Industries Board v. P.Kulothangan and anr., reported in (2004) 1 SCC 68, while dealing with Section 11 of the Code of Civil Procedure observed that the doctrine of res-judicata is applicable provided the Court trying the subsequent proceedings is satisfied that the earlier Court was competent to dispose of the proceedings and the matter had been heard and finally disposed of. The Supreme Court observed that the principles of res-judicata operates on the Court. It is the Courts which are prohibited from trying the issue which was directly and substantially in issue in the earlier proceedings between the same parties, (emphasis supplied) provided the Court trying the subsequent proceedings is satisfied that the earlier Court was competent to dispose of the earlier proceedings and that the matter had been heard and finally decided by such Court. In the said matter, a final judgment was delivered by the High Court and the same was allowed to attain finality. On a second occasion, the very same issue was sought to be raised at the instance of the Board before the Labour Court, while deciding the issue the Supreme Court observed that the issue should be held to be decided by a competent Court because the High Court was competent to decide the issue raised before it. In the present matter, the parties are not the same. It cannot be disputed that each individual employee has a personal and independent right. If award was made in favour of one, then such award would bind the said employee and the employer. The said award, by no stretch of imagination, can be allowed to bind all other employees. In a given case if an employee in collusion with the employer concedes to certain defences raised by the employer and then an award is made against the interest of the employee and in favour of the employer, then application of the award to all would lead to a bad

precedent. An award made in favour of or against an individual would be an award in favour of or against the said individual and would not bind others who are not parties to the lis.

It would also be necessary to see that the learned Single Judge was of the opinion that a new plea was sought to be raised for the first time in the High Court. We are unable to concede to the said observation made by the learned Single Judge. What was the defence in the earlier matter and what persuaded the learned Labour Court to make the award would altogether be a different thing. But it cannot be said that the plea was being raised in the High Court at a belated stage. In the present matter, the plea of cadre and grade was being raised at the first available opportunity. The learned Single Judge, in our considered opinion erred in making such observations.

The learned Single Judge was also unjustified in observing that if such contention is allowed to be raised for the first time, then it would lead to or necessitate a deep and probing inquiry on various questions of fact which cannot be entertained in a petition under Article 226 of the Constitution of India. In fact, when a plea based on facts is raised and questions relating disputed facts are raised in the High Court in a petition under Article 226, then the Court would refuse to interfere in the matter. The learned Single Judge in fact adopted a strange approach in matter in rejecting the plea which was based and founded on facts. A plea in defence is a right of the respondent and if he wants to raise a legal plea and a plea is raised on a factual foundation then it cannot be rejected on the ground that it would lead to an inquiry. The trite law is that if factual disputes are raised by any party, the High Court would not interfere in the matter and would require the party coming to the High Court to approach a competent forum which can make an inquiry into the facts and record finding of facts.

The learned Single Judge, in our considered opinion, was also wrong in observing that even if the Civil Mistries were different or there was a distinction then too the petitioners were entitled to the benefits flowing from the award or were entitled to equal pay scales as was given to the Civil Mistries at Ukai. In our opinion when the appellants were raising a plea that under special circumstances and for particular and peculiar reasons particular benefits were extended in favour of one and that was a case of discretion and not of discrimination, then the case should have been

considered in its true perspective in view of the pleadings raised by the respondent.

In a matter between the same parties, a finding may operate as res-judicata and if a particular plea could be raised during the course of the litigation and was not raised then the particular party would be estopped by its conduct in raising the plea in future dispute between the same parties. But in a case where the parties are different and a different plea is sought to be raised to justify the action of the present appellant, then the plea of estoppel also would not be available to the present writ petitioners. Plea of estoppel is against a party, it stops the party from raising a pleading which it could earlier raise but was not raised or the party raised the pleading but left it at a later stage in the earlier litigation. In the present matter, the appellant raised the plea before the learned Single Judge and were taking it to its logical end, but the learned Single Judge did not allow them to raise the plea by making observations that such distinction between the same class cannot be considered.

At this stage, we must also look into the different cadres. Civil Mistries and Civil Supervisors are different cadres who are getting different pay and are entitled to different pay scales. If the pay scale of Civil Supervisors is awarded in favour of the Civil Mistries, then the cadre of the Civil Mistry would become equal to the cadre of Civil Supervisor and would virtually merge in the cadre of Civil Supervisor and would stand abolished. If this is allowed to be done, then a person who is not entitled to be appointed as Civil Supervisor and does not have the qualifications for the said post will have to be appointed as Civil Supervisor even if he does not possess qualifications for being appointed as Civil Supervisor. In the reverse if the cadre of Civil Supervisor is allowed to merge in the cadre of Civil Mistry, it would create a further anomalous situation because a person having higher qualification and entitled to higher post will have appointed to a lower post because of abolition of the higher cadre.

If the judgment of the learned Single Judge is allowed to stand, each and every Civil Mistry would become a Civil Supervisor, the result would be abolishing the cadre itself.

It is to be seen that in the matter of Government of West Bengal v. Tarun K.Roy and ors. reported in

(2004) 1 SCC 347, the Supreme Court observed that the plea of equal pay for equal work would be applicable to the persons similarly situated and not to the persons who are differently situated. In the said matter, the Supreme Court observed that it is for the executive and not for the Courts to lay down the requisite qualification for a post. The Supreme Court further observed that if different cadres have different qualifications and different pay scales are allowed, then the said cadre and the said pay scale is allowed to survive and cannot be abolished. The Supreme Court observed that Article 14 read with Article 19(d) envisages the doctrine of equal pay for equal work. The said doctrine, however, does not contemplate that only because the nature of the work is same irrespective of the educational qualifications or irrespective of their source of recruitment or other relevant considerations, the said doctrine would be automatically applicable. According to the Supreme Court, the holders of higher educational qualifications can be treated as a separate class and can be treated differently. We would be justified in observing that the Civil Mistries are mostly working in Transmission side where the job of erecting new transmission line, which is entrusted to the contractor, is being supervised by them. The said work being monotonous, they are supposed to see while erecting lines, the contractor uses adequate concrete and mortar portions and the knowledge of Civil Mistry meets with the minimum qualification for the said post. So far as Civil Supervisors are concerned, they do not work on transmission side, but work only in the power stations. The work burden of Civil Supervisor in a power station is in varied areas which is supervised by Civil Supervisors, like Ash Dyke, maintenance of major leakages in Cable Trench CW tunnels, concealed pipeline leakages, French Well maintenance, water supply maintenance, supervision of structural and power house building paintings, Cooling Tower maintenance, Oxidization pond maintenance for pollution control, Railway Track maintenance, Coal Handling Plants civil maintenance, land acquisition work, maintenance of Colony and its allied works etc. Perusal of the above would show that the work of Civil Supervisors and Civil Mistries is different. Civil Mistries have to work in a small spectrum and while the work assigned to the Civil Supervisor varies in nature and are different. In the matter of Govt. of West Bengal (supra), the Supreme Court observed that posts of Operator-cum-Mechanic and Sub-Assistant Engineers were technical posts. The Supreme Court observed that in exercise of its powers of judicial review, the Courts cannot hold that Matriculates with a certificate from ITI

or simple graduates would be entitled to post of Sub Assistant Engineer. From the judgment of the Supreme Court, it would clearly flow that if there are different cadres and different qualifications are provided for the incumbents, then such person should only be appointed in those cadres which fit within the qualifications. Even otherwise, this is trite law that people coming from different sources though are discharging same work, may be allowed to get different scales. In a given case, the Gold Smith who is also using a small hammer would be paid much better in comparison to a blacksmith using a big hammer. The skill to use the small hammer is higher qualification in comparison to the strength to use a big hammer.

Mr.Mishra submitted that if the persons are similarly situated then they must be given the equal treatment. Placing reliance upon the judgment of the Allahabad High Court in the matter of M/s.Hindustan Cables Ltd. v. P.O.Labour Court, Allahabad and ors., reported in All.1998 (78) FLR) 15, it was submitted that if some employees were getting better benefits under a settlement, then the said benefits could not be denied to others. To the same effect is the judgment of the Apex Court in the matter of Workmen of the Rajasthan Atomic Power Project v. Management of the Rajasthan Atomic Power Project, reported in 1976 Labour Law Journal, 271. For proper appreciation of these two judgments, we will have to look into the definition of "settlement". Settlement is defined in Section 2(p) of the Industrial Disputes Act. Settlement means a settlement arrived at in the course of conciliation proceedings and includes a written agreement between employer and the workmen arrived at otherwise than in the course of conciliation proceedings where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to an officer authorised in this behalf by the appropriate Government and the conciliation officer. A settlement is altogether different in comparison to an award. A settlement is with the open eyes and out of free will of the employer and the employees or between the employer and the representative of the employees. Settlement would bind the parties in its terms. Neither the employer nor the employee can be allowed to say that the benefits from the said settlement would be extended to few and not to others. Similarly an employee cannot be allowed to say that he would be entitled to something more than what is agreed in the settlement.

An "award" is defined in Section 2(b) of the Act.

An award means, an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10A.

The award is in contra-distinction from a settlement. In a settlement, the parties decide as to what would be final between them while for an award, the Tribunal decides that what is right, just and final for the parties. In matter of award, there is no settlement between the parties. The two judgments on which Mr.Mishra placed reliance are of cases where the employer was not giving the benefits flowing from the settlement. It is also to be seen that before the Allahabad Court, the matter was in relation to Section 33-C(2) while in the present matter, on strength of an award in favour of four persons the benefits are sought to be obtained in favour of hundreds on the foundation that the award be treated as a settlement. In the opinion of this Court, this cannot be done.

In the matter of Hindustan Aeronautics Ltd. v. Presiding Officer, Industrial Tribunal, Agra and ors., reported in 2005 LAB I.C. 186, the Allahabad High Court observed that the House Rent Allowance if paid to particular persons and particular class of persons are allowed to stand for long time, then in such a situation, it would become a case of discrimination. The facts of the said case were altogether different. In the present case, a distinction is sought to be made between the Civil Mistries and Supervisors. The appellant in fact by showing their utmost respect to the award made by the Labour Court, have extended the benefit in favour of those persons who could secure the award in their favour.

Reliance was also placed on a judgment of the Allahabad High Court in the matter of M.Katju v.Umeshwar Pandey, reported in 2005 LAB I.C. 196 to contend that if there is a disparity in the pay scale of typists who were recruited before and after 1976 then such disparity could not be allowed. Present is not a case where the disparity has been continued because of the action of the appellant or because few have been appointed subsequently. Present is a case where the respondent Electricity Board has come with a case that the petitioners were appointed as Civil Mistries and they are being paid in the pay scale of the said cadre. The original petitioners did not say that they were illegally appointed in the cadre of Civil Mistries. It is also not their case that duties of these two cadres are same or

similar. It is also not their case that the qualifications for appointment to these different posts are same and similar. Their case simply is that because there is an award in favour of some and one man was given additional benefits therefore, the Civil Mistries as a class should be given the benefit of the said award and the wrong committed by the Electricity Board be perpetuated forever. We do not think that this can ever be done.

So far as the plea raised by the respondents (original petitioners) relating to Civil Mistries-Ukai is concerned we must observe that the affidavit filed by the respondent is based on fanciful reasons. Serious allegations have been made against the Board but no foundation has been shown. An allegation of conspiracy has been made without any foundation. No circumstances have been brought on record except the fact that the incumbent has been promoted. Promotion is an incident of the service and even if promotion is given to somebody, then that would not mean that the present appellants were playing the game.

Mr.Mishra submitted that from Original Annexure.2, it would be concluded that in the year 1987 the candidature for the post of Work Charge Mistry were invited for their appointment in the pay scale of Rs.340-12-388-20-488-22-642-25-792 and if that be so, the equivalent revised post would be Rs.1180-3050. In our considered opinion, this argument is not required to be considered because that ground was not raised before the learned Single Judge. The learned Single Judge has not taken up this fact as a ground for granting relief to the original writ petitioners. The learned Single Judge had granted the relief to the original petitioners mainly on the ground that an award was made by the competent Labour Court and a Civil Mistry at Ukai was allowed the benefit of pay scale of Rs.1180-3050.

After giving our due consideration to the totality of the circumstances and for the reasons aforesaid, we are unable to uphold the judgment of the learned Single Judge. The same deserves to and is accordingly set aside. The petition filed by the petitioners is dismissed.

Civil Application stands disposed of.

(R.S.Garg, J.)

Sreeram. (Ravi R.Tripathi, J.)